Supreme Court, U. S.
FILED
FEB 25 1977
MICHAEL RODAK, JR., CLERK

Supreme Court of the United States

October Term, 1976

No. 76-954

CUYAHOGA COUNTY BAR ASSOCIATION, *et al.*,
Appellants,

vs.

SUPREME COURT OF OHIO, *et al.*,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

REPLY BRIEF OF PLAINTIFFS-APPELLANTS OPPOSING MOTION TO AFFIRM

EDWIN F. WOODLE
628 Keith Building
Cleveland, Ohio 44115
Attorney for Appellants

THE GATES LEGAL PUBLISHING CO., CLEVELAND, OHIO—TEL. (216) 621-5647

Supreme Court of the United States

October Term, 1976

No. 76-954

CUYAHOGA COUNTY BAR ASSOCIATION, *et al.*,
Appellants,

vs.

SUPREME COURT OF OHIO, *et al.*,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

REPLY BRIEF OF PLAINTIFFS-APPELLANTS OPPOSING MOTION TO AFFIRM

Plaintiffs-appellants respectfully consider that this brief presentation is required by reason of apparent misapprehensions of appellants' contention and a presentation on behalf of the defendants-appellees based upon an inaccurate view of a vital fact affecting the appellants' constitutional rights.

No contention has been advanced on behalf of the appellants that the Supreme Court of Ohio has no authority to prohibit the unauthorized practice of law. The use by the appellants in this connection of the phrase "non-judicial function" is neither unique nor unusual. The term has reference only to those functions and powers of a judicial

body, administrative or supervisory, which have no relation to the hearing and determination of cases and controversies presented for their consideration. Accordingly, any step taken by the Supreme Court of Ohio to "prohibit" the unauthorized practice of law is the implementation of a non-judicial function.

One of the violations of appellants' constitutional rights in this case arises not from the adoption of the rule relating to this subject, but from the imposition solely upon the members of the Bar of a tax intended to constitute the entire source of public funds allocated by the Court for that function.

The inaccuracy of the view adopted by the appellees lies in their continued reference, basic to the appellees' entire argument, of the financial imposition imposed upon the appellants as a "fee". This, notwithstanding the clear concession made by the appellees to the District Court, as appears on page 13 of appellants' Jurisdictional Statement, in which the appellees concede that *"where, as here, the law is designed to raise revenues to obtain its objective* the States are accorded particular deference".

A law, or rule, the purpose of which is to raise revenue, is a tax and not a fee. This distinction is vital to appellants' submission of the violation of one of appellants' due process rights.

Conceding that this Court has determined that the Fourteenth Amendment "leaves the States free to distribute the powers of government as they will between their Legislative and Judicial Branches", as declared by this Court in *Hughes v. Superior Court of California* (1950), 330 U.S. 460, 70 S. Ct. 718, that proposition is entirely inapposite to the instant case, under the provisions of Article IV, Section 2(B)(G) and Article IV, Section 5(A), as well as

Article XII, Sections 4 and 5 of the Ohio Constitution. In those Articles, the power and authority of the appellees are limited solely and entirely to functions of a judicial nature. The raising of revenue, or taxation, is solely within the authority and competence of the General Assembly of the State.

This Court has further recognized the importance and the vital legal consequences of the distinction in question in *National Cable Television Association v. United States* (1974), 415 U.S. 336, 94 S. Ct. 1146. At 94 S. Ct. 1146, 1149, this Court noted that:

> "*Taxation is a legislative function* **. A fee, however, is incident to a voluntary act, e.g., a request that a public agency permit an applicant to practice law or medicine or construct a house or run a broadcast station. **
>
> "A 'fee' connotes a 'benefit' and the act by its use of the standard 'value to the recipient' carries that connotation."

No such connotation can be discerned in the alleged "registration fee" imposed by the Supreme Court of Ohio for the purpose of raising revenue to be employed in a non-judicial function having no relationship whatsoever to the regulation of the Bar or the discipline of its members.

This purpose is obviously in contrast to that involved in *In re Reed* (1970), 369 U.S. 274, relied upon by the appellees, which involved a contribution by members of the Bar to a Clients Security Fund, a principal purpose of which was to foster and maintain confidence on the part of the public in the members of the legal profession.

It is submitted that all of the arguments of the appellees based upon the use of the designation "fee" are

accordingly irrelevant and inappropriate in dealing with the federal constitutional questions presented.

In an article entitled *The Supreme Court and Natural Law* (1968), 54 AMERICAN BAR JOURNAL 570, 573, it was noted, with reference to the Supreme Court of the United States, that "the Supreme Court is unable to fund its programs".

The appellants believe and contend that the same proposition of law applies to the Supreme Court of Ohio under both the Federal and State Constitutions.

Respectfully submitted,

EDWIN F. WOODLE
628 Keith Building
Cleveland, Ohio 44115
Attorney for Appellants